

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 1684 to 1701 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

RAMSINH PARVATISINH SOLANKI DECD. THRO' HEIRS LALUBEN WD/O

Appearance:

MR RC KODEKAR, AGP for appellants.

MR VIJAY N RAVAL for Respondents-claimants

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 29/08/2000

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

Admitted. Mr. Vijay N. Raval, learned counsel waives service of notice in each appeal on behalf of the claimants.

Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, all the appeals are taken-up for final hearing.

2. All these appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated April 30, 1999 rendered by the learned 2nd Lt. Civil Judge (S.D.), Panchmahals at Godhra in Land Acquisition References No.362/90 to 379/90 and as common questions of fact and law are involved in the appeals, we propose to dispose of them by this common judgment.

3. The State of Gujarat had received a proposal to acquire agricultural lands of village Sama, Taluka : Kalol, District : Panchmahals for the public purpose of construction of main canal of Narmada Irrigation Project. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Sama were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in official Gazette on October 2, 1986. The land owners, whose lands were proposed to be acquired, were served with notices under section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, Special Land Acquisition Officer, Narmada Project, Unit-II, Baroda had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands which were specified in the notification published under section 4(1) of the Act, were needed for the public purpose of construction of Main Canal of Narmada Irrigation Project. Therefore, declaration under section 6 of the Act was made, which was also published in official Gazette on September 10, 1987. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. Having regard to the materials placed before him, Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs. 11,000/- per hectare by his award

dated December 4, 1989, which was rendered in Case No.12/87. The claimants were dissatisfied with the offer of compensation made by the Special Land Acquisition Officer and did not accept the compensation. They filed applications under section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of compensation. Accordingly, references were made to District Court, Panchmahals at Godhra, which were numbered as Land Acquisition References No.362/90 to 379/90.

3. In the reference applications, it was pleaded by the claimants that they were taking 2 to 3 crops in a year and as their income from sale of agricultural produces was substantial, they ought to have been awarded compensation at the rate of Rs.20/- per sq.mt. According to the claimants, the lands acquired were situated near a developed industrial area and as the lands acquired had potentiality for non-agricultural use, they were entitled to compensation at the rate of Rs. 20/- per sq.mt. In the reference applications, the claimants had also demanded compensation for injurious affection etc. Though the respondents were duly served, no written statement was filed on their behalf. In view of the averments made in the reference applications, necessary issues for determination were framed by the reference court at Exh.8. On behalf of all the claimants, Mr. Dahyabhai Dhulabhai, who was claimant in Land Acquisition Reference No.366/2000, was examined at Exh.19. In his deposition before Court, the witness asserted that the compensation offered by the Land Acquisition Officer at the rate of Rs. 1.10 ps. per sq.mt. was inadequate and was accepted by the claimants under protest. The witness claimed before Court that the lands acquired were highly fertile and had potentiality for non-agricultural use. The witness produced xerox copy of judgment dated March 5, 1993 rendered by the learned Joint District Judge, Panchmahals at Godhra, in Land Acquisition References No.333/89 to 343/89 at Exh.16 and stated that as the lands which were subject matter of previous judgment of the Court, were similar in all respects to the lands acquired in the instant case, the claimants were entitled to compensation on the basis of the said judgment. In cross-examination, the witness stated that Derol Railway Station was at a distance of 6 KMs. from the acquired lands. The witness denied the suggestion made on behalf of the appellants that the lands which were subject matter of previous award, were better in quality than the lands acquired in the instant case. The witness also denied the suggestion that some of the lands acquired were fellow lands.

4. We may state that neither oral nor documentary evidence was led by the acquiring authorities. On appreciation of evidence led by the claimants, the reference court deduced that the previous award of the reference court produced at Exh.16 was relevant as well as comparable for the purpose of ascertaining market value of the land acquired in the instant case. The evidence on record indicated that by Exh.16 the claimants were granted compensation ranging between Rs. 9.10 ps. to Rs. 9.65 ps. per sq.mt. which was reduced by the High Court to Rs.7/- per sq.mt. It was also noticed by the reference court the judgment of the High Court was confirmed by the Supreme Court. In view of the said previous judgment, reference court held that the claimants are entitled to get compensation at the rate of RS. 7/- per sq.mt. by the impugned award, giving rise to the present appeals.

5. Mr. R.C.Kodekar, learned A.G.P. submitted that the previous award of the Court produced at Exh.16 is neither relevant nor comparable and, therefore, the reference court should not have determined market value of the lands acquired in the present case on the basis of the said judgment. According to the learned counsel for the appellants, the Land Acquisition Officer had passed the award after taking into consideration the relevant factors, like, nature and situation of the lands acquired, fertility, productivity, income derived from the land etc. and, therefore, more compensation than what was offered by the Land Acquisition Officer should not have been awarded by the reference court. What was claimed was that no cogent evidence was adduced by the claimants entitling them to get additional compensation and, therefore, the appeals should be accepted.

6. Mr. Vijay N. Raval, learned counsel for the claimants pleaded that the previous award of the reference court produced at Exh.16 is relevant as well as comparable and, therefore,, it cannot be said that any error was committed by the reference court in placing reliance on the said judgment for determining market value of the lands acquired in the instance case. The learned counsel for the claimants maintained that assertion made by witness Dahyabhai Dhulabhai to the effect that the lands which were subject matter of Exh.16 were similar in all respects to the lands acquired in the instant case, was never controverted on behalf of the respondents by leading rebuttal evidence and, therefore, the claimants are entitled to compensation on the basis of the said judgment. What was emphasised was that

reasonable amount of compensation has been determined by the reference court and, therefore, the appeals should be dismissed.

7. We have heard the learned counsel for the parties and taken into consideration the paper book supplied by the learned counsel for the respondents which contains oral as well as documentary evidence led by the claimants. Exh.16 is the previous award rendered by the learned Jt. District Judge, Panchmahals at Godhra in land Acquisition References No.333/89 to 343/89. Therein, agricultural lands situated in the outskirts of village Sama were acquired for the Project of Narmada Main Canal pursuant to notification which was published under section 4(1) of the Act on September 25, 1986. The Land Acquisition Officer by his award dated April 3, 1989 had offered compensation to the claimants at the rate ranging between As. 1.10 ps. to As. 1.65 ps. per sq.mt. Feeling aggrieved by the said offer, the claimants had sought reference and the reference court by judgment dated March 5, 1993 had held that the claimants were entitled to additional compensation at the rate of As. 8/- per sq.mt. Exh.17, which is judgment of the High Court rendered in First Appeals No.850/94 to 860/94 indicates that in appeals the High Court had reduced compensation determined by the reference court and held that the claimants were entitled to compensation at the rate of RS.7/- per sq.mt. Thereupon, Sardar Sarovar Narmada Nigam Ltd. had carried the matter before the Supreme Court by filing petitions for Special Leave to Appeal (Civil) No.19069-76/95, which were dismissed by order dated September 27, 1996, which is quite evident from Exh.18. Witness Dahyabhai Dhulabhai examined on behalf of the claimants, has clearly stated in his evidence that the lands acquired earlier for which judgment was delivered at Exh.16, are similar in all respects to the lands acquired in the instant case. According to the witness, fertility and pattern of crops raised were also similar. This assertion made by the witness could not be effectively challenged on behalf of the respondents. As observed earlier, no evidence either oral or documentary was produced on behalf of the respondents to establish that the lands which were subject matter of Exh.16, were better in quality than the lands acquired in the instant case. It is well settled that judgments of courts in land acquisition cases or awards given by the Land Acquisition Officers can be relied on as a good piece of evidence for determining market value of the land acquired under certain circumstances. One of the circumstances is that such an award or judgment of the court of law must be a previous

judgment. It is only the previous judgment of the court or an award which can be made the basis for assessment of the market value of the acquired land subject to party relying on such judgment to adduce evidence for showing that due regard being given to all attendant facts, it could form basis for fixing market value of the acquired lands. Having regard to the attendant circumstances, we are of the opinion that no error was committed by the reference court in placing reliance on the previous judgment of the court produced at Exh.16 for assessing market value of the lands acquired in the instant case, inasmuch as the lands covered by judgment Exh.16 were similar in all respects to the lands acquired in the instant case and the previous judgment had become final between the parties. We do not find that either there is wrong application or misapplication of relevant factors or principles of compensation by the reference court while determining the market value of the lands acquired in this case. Thus, no ground is made out by the appellants to interfere with the impugned judgment. The result is that the appeals are liable to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(J.M.Panchal,J.) (M.C.Patel,J.)

(patel)